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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO.4238 OF 2003

1. Union of India
through Commercial Manager
(Catering) Central Railway
Mumbai CST, Mumbai-1

2. Divisional Railway Manager (C)
Solapur Division, Solapur ... Petitioners

V/s.

Shri S.S. Vakani
c/o.K.B. Telreja
Phulwadi, Plot No.16, Dev Samaj
Road, Ulhasnagar ... Respondent

Mr.Suresh Kumar for Petitioners
None for Respondent

CORAM: **V.G. PALSHIKAR, Ag.C.J &**
SMT.NISHITA MHATRE, J.

DATED: **FEBRUARY 16, 2006**

ORAL JUDGMENT (PER V.G.PALSHIKAR, Ag.C.J.):

. By this Petition, the Petitioner-Union of India has challenged the order passed by the Central Administrative Tribunal in Original Application No.679 of 2001 on 19.12.2002.

2. By this order, the Tribunal has allowed the Original Application of the present Respondent and restrained the Union of India from recovering the amount outstanding against the Respondent in the sum of

Rs.1,87,642/-.

3. The present Respondent was departmentally proceeded against and found guilty of several charges of misconduct. He was penalised by the Disciplinary Authority and the penalty inflicted was removal from service. In the departmental appeal preferred by the employee, the sentence was reduced taking a lenient view of the matter. The appellate authority while so doing observed as under:

> "I have therefore taken lenient view and decided to reduce the present penalty to reduction by two grades i.e., from 5500-9000 to 4000-6000 fixing your pay at Rs.4500 for two years (N.C.) to meet the ends of justice.
>
> In addition to above, the losses which were incurred due to the irregularities by you shall also be recovered from your salary regularly."

4. The Union of India taking resort to this penalty started recovering from the employee the sum of Rs.1.87 lacs which was impugned before the Tribunal. The Tribunal on consideration of the entire material before it came to the conclusion that the recovery as commenced by the present Petitioner was not proper. The observations of the Tribunal allowing the Original Application are to be found in paragraphs 13 and 14 of the impugned order. They are as follows:

> 13. The applicant has replied to the notice vide his rely dated 23.05.2001. It is the duty of the respondents to consider the said reply and if reply is not found to be satisfactory one, after issue of charge sheet as per rules, if the respondents arrive to a finding that the applicant is imposed with the penalty of recovery of the said amount, the respondents may be said to be acting in accordance with law and not otherwise.
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> 14. In the result, OA is allowed. the recovery ordered by the respondents amounting to Rs.1,87,642/- is quashed and set aside. No order as to costs.

5. In effect, what has been found by the Tribunal is that recovery of monies due as held by the appellate authority can be undertaken only after the issuing show-cause notice was given and a reply also has been filed by the present respondent. However, without considering the reply or ascertaining the correct extent of amount which can be recovered in the disciplinary proceedings in which the penalty was so reduced, the Petitioner included certain amounts which according to the Petitioner were due from the Respondent in a departmental enquiry differently conducted and decided. In our view, such a procedure is not permissible in law.

6. The order of the Tribunal is therefore, liable to be modified to the extent that the Union of India shall take into consideration the reply given to its

notice by the respondent dated 23.5.2001 and after affording reasonable opportunity of being heard determine the amount recoverable from the Respondent in pursuance of the order passed by the appellate authority quoted above in accordance with law. Except for this modification, no further modification is necessary. Petition is disposed off accordingly.